

STATE OF MICHIGAN
COURT OF APPEALS

In re R. C. A. BRODEN, Minor.

UNPUBLISHED

October 13, 2015

No. 326213

Wayne Circuit Court

Family Division

LC No. 02-410922-NA

Before: GLEICHER, P.J., and SAWYER and MURPHY, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood that the child will be harmed if returned to parent). We affirm.

I. STANDARDS OF REVIEW

“This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). Likewise, this Court reviews for clear error a trial court’s best interests determination. *Id.* at 713. “A finding is clearly erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (quotation marks and citation omitted; alteration in original).

II. STATUTORY BASIS FOR TERMINATION

In order to terminate parental rights, the trial court must find that a statutory basis for termination under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Only one statutory ground must be established to support termination of a respondent’s parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

First, respondent argues that the trial court clearly erred in finding a statutory basis for termination under MCL 712A.19b(3)(g). In particular, respondent argues that termination was improper under that provision because the record shows that he provided “good care” of the child and substantially complied with his case service plan. We disagree.

MCL 712A.19b(3)(g) permits termination of parental rights “if the court finds, by clear and convincing evidence,” that “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” Contrary to respondent’s claims, the trial court did not clearly err in concluding that respondent failed to substantially comply with the requirements of the case service plan, and finding that there was no reasonable likelihood that respondent would be able to provide proper care and custody for the child within a reasonable time considering the child’s young age of 17 months. MCL 712A.19b(3)(g).

A parent’s failure to comply with a case service plan can be evidence of the parent’s inability to provide proper care and custody. See *In re Trejo*, 462 Mich 341, 360 n 16, 360-361; 612 NW2d 407 (2000); see also *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). “Parent-agency agreements are voluntary agreements between the caseworker and the parent that obligate each to steps specifically tailored to the family’s needs,” *In re Trejo*, 462 Mich at 346 n 3, but a “court may order compliance with all or part of the case service plan [as provided in MCL 712A.18f],” MCR 3.973(F)(2). See also *In re Trejo*, 462 Mich at 346 n 3 (citing the former version of the court rule). A parent’s progress is measured by the parent’s compliance with, and benefit from, the court-ordered services, not only the services in the parent-agency agreement (PAA). See *id.* at 360-361, 360 n 16 (“Because the court had ordered that respondent comply with the requirements of the parent-agency agreements in the . . . dispositional order, the dissent’s argument that subsection 19b(3)(g) does not require compliance with the parent-agency agreement misses the point. The parent-agency agreements in this case were part of the court order, and respondent’s failure to comply with those requirements [was] indicative of neglect.”).

Respondent’s court-ordered case service plan included substance abuse treatment, random drug screens, parenting classes, domestic violence counseling, mental health services, a psychological evaluation, and a psychiatric evaluation. Respondent was also required, by court order, to obtain and maintain suitable housing and a legal source of income. In its order terminating respondent’s parental rights, the court noted, “The child was removed from [respondent] 16 months ago[,] during which time father has failed to maintain consis[t]ent visits, negative drug screens, legal source of income[,] and a stable housing environment for the child to thrive.” Likewise, the report and recommendation of the referee found that respondent “failed to substantially and consistently comply with the case service plan or make sufficient progress to allow the child to be returned safely home.”

The trial court’s findings were supported by clear and convincing evidence. At the time of the termination hearing, respondent had completed psychological and psychiatric evaluations, participated in outpatient and in-home individual and domestic violence counseling, participated in substance abuse treatment programs, and completed parenting classes. The caseworkers testified that respondent appropriately cared for the child and responded to his needs during visitation. Despite this progress, however, the record demonstrates that respondent was not in a position to provide proper care and custody for the child. Apart from a brief period during which respondent was employed out-of-state, respondent failed to secure and maintain a legal source of income. Further, he turned down an opportunity to pursue a brick mason program and indicated that he did not want a job because he was in school, although he was not in school at the time of the termination hearing. The caseworkers testified that respondent never obtained suitable

housing, frequently moving between inpatient substance abuse facilities, transitional or temporary housing that did not allow children, and his mother's home. Although respondent testified that he was on a waiting list for a voucher program through Detroit Central City and was pursuing an apartment through the Southwest Solutions program, respondent was still living in a three-quarter house unsuitable for children at the time of the hearing, and had failed to follow through with appointments related to housing applications.

Furthermore, respondent failed to visit the child consistently during the 16 months that the child was removed from his care; although the longest period between visits was one month, respondent only attended approximately half of his visits with the child. Even though respondent explained that this was due to "[his] bus transportation" and depression related to his belief that he was being treated unfairly throughout the proceedings, the record shows that respondent was provided bus tickets for transportation—as the actual transportation issue was that he would miss the bus—and that he was offered services, including in-home counseling, to address his mental health issues. One of the foster care workers also testified that respondent "still comes to visits sometimes agitated and very paranoid[,] and that's a concern when you're with a child[.] [Y]ou need to have patience[,] and I don't think that he's always able to control that." Respondent had only been consistent with his substance abuse therapy during the last few months that the most recent foster care worker was on the case. Respondent consistently failed to attend numerous drugs screens throughout the proceedings, and provided one screen that tested positive for cocaine and one invalid screen. At the time of the termination hearing, respondent had not submitted to any drug screens in approximately three months. The record also indicates that respondent, who was diagnosed with schizophrenia and schizoaffective disorder, continued to struggle with mental health issues throughout the proceedings—which resulted in two hospitalizations—despite his therapy and failed to take his medications consistently, even though he indicated at the termination hearing that he was currently compliant.

Given the significant record evidence demonstrating respondent's failure to substantially comply with his case service plan throughout the proceedings—including respondent's inability to obtain and maintain suitable housing and legal employment—and the evidence showing that respondent continued to struggle with unresolved substance abuse and mental health issues, the trial court did not clearly err in finding that respondent failed to provide proper care or custody for the child. Likewise, there was no reasonable expectation the respondent would be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712A.19b(3)(g); see *In re JK*, 468 Mich at 214; *In re Trejo*, 462 Mich at 360 n 16, 360-361.

Respondent also argues that the trial court clearly erred in finding a statutory basis for termination under MCL 712A.19b(3)(j). For the same reasons, we disagree.

Under MCL 712A.19b(3)(j), a "court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence," that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." A parent's failure to substantially comply with a case service plan is evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. See MCL 712A.19a(5); MCR 3.976(E)(2); *In re Trejo*, 462 Mich at 346 n 3.

As discussed above, the trial court did not clearly err in concluding that respondent failed to substantially comply with his case service plan. In light of the evidence discussed *supra*, demonstrating respondent's ongoing substance abuse and psychological issues, and his inability to maintain stable housing and legal employment, there is a reasonable likelihood that the child would be harmed if he were returned to respondent given his pattern of behavior and noncompliance with the case service plan. The trial court did not clearly err in concluding that termination was proper under MCL 712A.19b(3)(j). See *In re Trejo*, 462 Mich at 346 n 3.

III. BEST INTERESTS DETERMINATION

Respondent argues that the trial court clearly erred in concluding that termination of his parental rights was in the best interests of the minor child. We disagree.

Pursuant to MCL 712A.19b(5), "[t]he trial court must order the parent's rights terminated if the [petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App at 713 (footnotes omitted). In deciding a child's best interests, a court may consider the child's bond to her parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *Id.*; *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714.

The trial court focused on the child's need for a stable, permanent home, noted the specific ways in which respondent failed to comply with his case service plan, and found that respondent did not have the interest and ability to parent the child and provide him with a permanent and stable home while maintaining a sober lifestyle. The referee's report and recommendation noted, *inter alia*, the significant period of time that the child was in foster care, the child's need for permanency given his current age, the difficulty in assessing respondent's bond with the child given the child's young age, respondent's failure to participate in and benefit from services, respondent's inability to demonstrate that he can maintain a sober lifestyle or address his mental health issues to provide stability for the child, the fact that the child's needs were being met in his foster care placement, and that the child's foster home was a pre-adoptive placement with his half-sibling.

The trial court's findings and conclusions were not clearly erroneous. The evidence presented at the termination hearing indicated that the child needed permanency, stability, and finality. It is not apparent from the record evidence that respondent had a particularly strong bond with the child. Respondent had not resided with the child since he was approximately one week old. Although respondent testified that the child recognized respondent and ran straight to him with open arms during their visits, the most recent foster care worker testified that there was a significant difference between the child's demeanor and comfort level when he was with his foster mother as opposed to respondent. Another foster care worker also testified that the child did not appear to have a particularly strong bond with respondent, stating that the child appeared to react to respondent as he would react to her. All of the child's needs were being met in his foster home, and he was thriving in the care of his foster mother. The record indicates that

respondent failed to substantially comply with his case service plan. Given respondent's lack of housing, lack of income, and ongoing substance abuse and mental health issues, it is clear that the foster home had advantages over respondent's home. Additionally, the child was placed in a pre-adoptive foster home with his half-sibling. The trial court did not clearly err in finding, by a preponderance of evidence on the whole record, that termination of respondent's parental rights was in the child's best interests. *In re White*, 303 Mich App at 713; see also *In re Fried*, 266 Mich App 535, 543-544; 702 NW2d 192 (2005) (concluding that the trial court did not clearly err in finding that termination was in the child's best interests when, even though the respondent acted appropriately with the child and the child responded affectionately, the child was flourishing in his foster care placement, and it would take a significant period of time before the respondent would be in a position to care for the child given his ongoing substance abuse and personality issues).

IV. ADDITIONAL CLAIMS

In his brief on appeal, respondent raises several additional arguments. First, respondent asserts that the trial court did not provide sufficient time for him to complete the requirements of the case service plan, arguing, without citing any authority, that he was entitled to 14 months to complete the case service plan. Respondent has abandoned this argument because it was not included in the statement of the questions presented in his brief on appeal. See MCR 7.212(C)(5); *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 543; 730 NW2d 481 (2007), lv gtd in part 480 Mich 910 (2007). Nevertheless, we find no legal basis for concluding that respondent was entitled to 14 months to comply with the case service plan. The record shows that respondent had been given multiple opportunities and adequate time to show the court that he could comply with the requirements of the case service plan and meet the child's needs. "[T]he Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991).

Respondent also argues that the termination of his parental rights violated his rights under the Fifth and Fourteenth Amendments to the United States Constitution if he did not receive a copy of the PAA or was "not informed of its importance to his regaining custody of [the child]." Respondent also abandoned this unpreserved argument by failing to raise the issue in his statement of the questions presented. See MCR 7.212(C)(5); *Ypsilanti Fire Marshal*, 273 Mich App at 543. We conclude that respondent's claims that he was uninformed of the PAA or case service plan, and that he was uninformed of the importance of complying with that plan, are not supported by the record.

Finally, respondent contests the trial court's exercise of jurisdiction over this case. We again deem this issue abandoned because the argument was not raised in respondent's statement of the questions presented. See MCR 7.212(C)(5); *Ypsilanti Fire Marshal*, 273 Mich App at 543. In addition, respondent is precluded from raising this argument on appeal. In cases where "termination occurs following the filing of a supplemental petition for termination after the issuance of the initial dispositional order," "an adjudication cannot be collaterally attacked following an order terminating parental rights." *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008); see also *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005)

(“Matters affecting the court’s exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights.”), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163-164; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010).

Finally, respondent suggests in passing that petitioner failed to make reasonable efforts, or timely provide services, to facilitate respondent’s reunification with the child. Apart from noting that defendant had not been enrolled in services as of December 5, 2013, defendant provides no argument and cites to no authority in support of this position. To the extent that respondent has raised such an argument, we deem this argument abandoned. “A party cannot simply assert an error or announce a position and then leave it to this Court to discover and rationalize the basis for [his] claims, or unravel and elaborate for [his] argument, and then search for authority either to sustain or reject [his] position.” *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ William B. Murphy